Kerala Gazette No. 42 dated 21st October 1980.

PART I A

GOVERNMENT OF KERALA

Election Department

NOTIFICATION

No. 7594/EL1/80/Elec. *Dated, Trivandrum, 30th August* 1980.

Notification No. 82/KL-LA/4/80 dated 4th August 1980 of the Election Commission of India is hereby published.

By order,

J. S. JESUDHASAN,
Special Secretary (Home) and
Chief Electoral Officer.

Election Commission of India

Nirvachan Sadan,
Ashok Road,
New Delhi-11001

NOTIFICATION

Dated, 4th August, 1980.
Sravana 13, 1902 (*Saka*).

No. 82/KL-LA/4/80.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgment of the High Court of Kerala dated 23rd July, 1980 in Election Petition No. 4 of 1980.

In The High Court of Kerala at Ernakulam
(Wednesday the 23rd July, 1980/1st Sravana 1902)

Present:

THE HONOURABLE MR. JUSTICE GEORGE VADAKKEL

ELECTION PETITION No. 4/80

Petitioner :

K. P. Ramachandran Nair, Kappachathuchalayil, Palace Ward, Alleppey.

By Advocates M/s. K. Ramakumar & B. Satheeshchandran.

Respondents :

1. P. K. Vasudevan Nair, M.L.A. C.P.I. District Council Office, Mullakkal, Alleppey.
2. Acco, Haris Manzil, Municipal Office Ward, Alleppey.
3. N. Aravindakshan, Kari Madom, Thiruvampady, Alleppey-2.
4. S. Mohanlal, Advocate, Bar Council, Alleppey.

R1 by Advocates M/s. K. N. Sukumaran Nair, N. A. Muralidharan, B. Raman Pillai, K. K. Dinesan, N. S. Menon, Sunny Varghese & Mathew Zacharia, for R1.

This Election Petition having been finally heard on 15-7-1980 and having stood over to this day for consideration the court delivered the following :—

JUDGMENT

The petitioner and respondents Nos. 1 to 4 contested the Assembly election held in January 1980 from No. 100 Alleppey Assembly Constituency. The 1st respondent is the returned candidate. His election is sought to be declared invalid and void on the ground of the corrupt practices alleged in the petition. Petitioner also prays for re-count of the entire votes polled by the respective candidates. Besides he prays to order scrutiny, sorting and counting of all votes including invalid votes. He further prays for a declaration that he is the duly elected candidate from the above said constituency.

2. The corrupt practices alleged are :—(i) The 1st respondent published and distributed Ext. P1 leaflet. This, as stated in his petition, is a corrupt practice falling under section 123 (3) and (3A) of the Representation of the People Act, 1951 (hereinafter, the Act) (ii) He obtained and procured the assistance of Shri K. V. Ramakrishnan, a member of the Indian Administrative Service, for the furtherance of the

prospects of his election. This, according to the petitioner, falls under section 123 (7) (a) of the Act. For these reasons, according to the petitioner, the 1st respondent's election is to be declared void under section 100 (1) (b) of the Act. It is also the case of the petitioner that the result of the election, in so far as it concerns the 1st respondent, has been materially affected by non-compliance with the provisions of the Act and the Rules made thereunder, and that, therefore, the 1st respondent's election is to be declared void under section 100 (1) (d) (iv) of the Act. The complaint on this score is that rules 55 to 63 of the Conduct of Elections Rules, 1961 (hereinafter, the Rules) have not been complied with.

3. The 1st respondent owns the publication and distribution of Ext. P1 leaflet, but disputes the averment that it falls under the mischief of section 123 (3) and/or (3A) of the Act. He denies the allegation that he obtained or procured the assistance of Shri K. V. Ramakrishnan. He also denies the allegation that there has been non-compliance with the provisions of the Rules and further contends that if it is found to be true, it has not materially affected the result of the election, in so far as it concerns him.

4. On the above-mentioned pleadings the following issues were raised after discussion at the bar :—

"(1) Whether the petition is maintainable ?

(2) Whether the election of the 1st respondent is liable to be declared as void for all or any of the grounds of corrupt practices alleged in the petition ?

(3) Whether the petitioner is entitled to have an order of re-count of votes ?

(4) Is there non compliance with rules 55 to 63 of the Conduct of Elections Rules in the counting of votes in No. 100 Alleppey constituency ?

(5) Was the petitioner denied the right of 21 clear days of election propaganda ?

(6) Whether the relief claimed by the petitioner for a further declaration that he himself has been duly elected is liable to be granted ?

(7) Order regarding costs and other reliefs ?

5. *Issue* 1 :—No arguments were advanced before me on this issue. I find that the petition is maintainable.

6. *Issue* 2:—This issue has to be considered with reference to the charge of commission of the two corrupt practices levelled against the 1st respondent by the petitioner. I will deal with the two corrupt practices alleged against the 1st respondent one by one.

Ext. P1 Leaflet:

7. The question that arises for consideration is as to whether Ext. P1 Leaflet falls within the mischief of section 123 (3) and/or section 123 (3A). While advancing arguments on this part of the case the learned counsel for

the petitionce confined the submissions to section 123 (3A) and said that he is not erlying on sertion 123 (3) of thr Act. The ease of the petitioner, as pesented by his leaened eounsel is that Ext. P1 and paeticulaely that portion of it maekrd as Ext. P1 (a) has promoted the ferlings of enmity oe hatred between thr mrmbees of thr R.S.S. and the Muslim community, a religious minority, on grounds of religion and community, in fuetheeance of the prospeets of the Ist respondent's election and that has peejndieally affeeted the election of thr petitionre. It is also contended that, in any case, publication and distribution of Ext. P1 is an attempt to ereate enmity oe hatred between mrmbees of the R.S.S. and the Muslim community for the fortheeauee of the Ist respondent's peosprets in rleetion to the prejndice of the prtitioner's rleetion prospeets, even if it be that Ext. P1 and had no such effect on the voters.

8. Aeeoeding to the Ist eespondent Ext. P1 amounts only to a politieal appeal to thr rlectorate to support him and to vote foe him wheeein he has, intee alia, pointed ont the ineongeuity of the Indian Union Muslim League aligning itself with the Janatha Paety dominated by the R.S.S., the inronsisteney of the Congress (I) forming an alliance with Janatha Party in Keeala and the ineompatibility of the N.D.P. and the S.R.P. which paeties have eomr together in a feont to fight the elections.

9. It is bornr ont by the evidenee in the case that in the recent Assembly elections held in this State the main contest in many of the constitneneies was betwern c ndidates sponsored by two feonts, the Janadhipathya Munnani (Democratir Front) and thr Idathupaksha Janadhipathya Munnani (the Left Democratic Feont). The fiest mentioned front consisted of the following paeties:—Congeess (I), National Demoeratie Party (N.D.P.), Indian Union Muslim League, Keeala Congeess—Joseph Geoup, S.R.P., Praja Socialist Party and thr Janatha Party. The petitionee belongs to the National Demoeratie Party and he contested the election as a eandidate sponsoeed and suppoeted by the Janadhipathya Munnani. The Ist respondent belongs to the Communist Paety of India which was one of thr constiturnt parties of thr Idathupaksha Janadhipathya Munnani. It is not elear from the evidence in this case as to what other parties weee the constitnent paeties of this Munnani, and it is of no eonsequenee so fae as this ease is conrernrd. It is in this background that Ext. P1 leaflet has to be examined.

10. Ext. P1 opens by saying that a feont consisting of srven left drmoeeatie partirs has been formed and that the Ist eespondent is seeking the hrlp and co-opeeation of the eleetoeate in the namr of that feont. The next paeagraph thereof is to the effrct that the Idathnpaksha Janathipathya Munnani eepresrnts the labourres, the ageiculturists, the middle elass and othee woeking peoplr, that this feont has been formed not foe election purposes alone, that this front has taken a pledge to safeguard on a long range basis the interests of thr people of Kerala and that this feont has a rleae cut pe-gramme and a definitr aim. The thied parageaph thereot is abont the 'forces' aerayed against this front. Threrin the Ist respondent

says that elsewhere the Indira Congress and Janatha are fighting each other tooth and nail but in Kerala they have formed an alliance. It is also stated therein that the N.D.P. and the S.R.P. which are poles apart as regards the question of reservation have come together in Valathu Munnani (the right front). In between occurs the passage marked Ext. P1 (a) which, according to the petitioner, is objectionable as falling within section 123(3A) of the Act. In the said passage the 1st respondent says that the Indian Union Muslim League has no compunction to join hands with the Janatha dominated by the R.S.S. He then says that 'the hands of the R.S.S. are stained with the blood of thousands of innocent people belonging to the religious minorities' and that 'the Muslim League which claims itself to be the bodyguard of the Muslim community is joining hands with these (Bloods trained) hands'. In the next paragraph of Ext. P1 the 1st respondent says that such opportunistic alliance has been brought about by the selfish interests of the dominating clas es, and the opposition front is an incongrus ous front. Ext. P1 then by the next paragraph thereof exhorts the electorate to defeat that front which is opposed to the people. Therein the 1st respondent says that the front is being supported by the monopolists who rob the labourer-agriculturist class, the middle class and other working people, by the princes; and by the smugglers. He also says that these black-forces are the enemies of the land and the people. He further states therein that the Idathupaksha Janadhipathaya Munnani shall solidly stand by the people against that front. The next three paragraphs in Ext. P1 are devoted to appeal to the electorare to vote for the 1st respondent who (as stated therein) is sponsored by the Idathupaksha Janadhipathya Munnani and is a member of the Indian Communist Party. He assures that he will strive to discharge his responsibilities to the best of his ability and says that such was his past history. He in that connection says that both the State and his constituency are facing very many complicated and complex problems, that though he has not been successful in solving all problems, he has attempted to deal with many such problems sincerely; that the Idathupaksha Janadhipathya Munnani exhorts all voters to entrust the responsibility to govern Kerala on them, and that that Munnani has made it clear that if they take up the responsibility they will sincerely and without any delay carry out their programme. Ext. P1 winds up by saying that Alleppey has been the birthplace of the Idathupaksha Janadhipathya forces, that the people there had always been in the forefront of freedom-fights and revolutions, and that the 1st respondent has full faith in them that they will support the progressive forces in the decisive fight between the retrograde forces and the progressive forces.

11. The point that falls for decision is whether Ext. P1 has the potency of promoting ill-feelings of enmity and harted between two classes of people' the R.S.S. and the Muslim, on grounds of religion and community, as argued on behalf of the petitioner.

12. I have herein before set out at length the whole of the contents of Ext. P1 which is in Malayalam because as stated by the Supreme Court in *Kultar Singh v. Mukhtiar Singh*, (1964) 7 S.C.R. 790, in relation to

section 123 (3) of the Act, "Courts should not be astute to read in to the words used in the appeal anything more than can be attributed to them on its fair and reasonable construction". In that case the Supreme Court also laid down the following principles which have to be applied in construing such documents as Ext. P1:—

"The document must be read as a whole and its purport and effect determined in a fair, objective and reasonable manner. In reading such documents, it would be unrealistic to ignore the fact that when election meetings are held and appeals are made by candidates of opposing political parties, the atmosphere is usually surcharged with partisan feelings and emotions and the use of hyperboles or exaggerated language, or the adoption of metaphors, and the extravagance of expression in attacking one another, are all a part of the game, and so, when the question about the effect of speeches delivered or pamphlets distributed at election meetings is argued in the cold atmosphere of a judicial chamber, some allowance must be made and the impugned speeches or pamphlets must be construed in that light. In doing so, however, it would be unreasonable to ignore the question as to what the effect of the said speech or pamphlet would be on the mind of the ordinary voter who attends such meetings and reads the pamphlets or hears the speeches."

13. While section 123 (3) of the Act frowns upon appeal to religion, race, caste, community or language in order to influence an electorate and makes such an appeal a corrupt practice, the Act by section 123(3A) (inserted in the Act in 1975 restrospectively) makes 'promotion of, or attempt to promote, feelings of enmity or hatred between different classes, a corrupt practice, when that is done or attempted to be done by the candidate or his agent or by any other person with the consent of the candidate or his agent for the furtherance of his election prospects or to the prejudice of any candidate, and by section 125 thereof makes it an offence punishable with imprisonment or fine or both, when done or attempted to be done, by whomsoever in connection with an election. Thus one who is guilty of the corrupt practice under section 125 (3A) necessarily also commits an electoral offence under section 125 (though vice versa it is not so) and therefore, it is doubly necessary to examine and construe Ext. P1 anxiously applying the rules of construction laid down by the Supreme Court in the passage extracted in the preceding paragraph.

14. Culling out Ext. P1 (a) the passage in Ext. P1 which is objected to by the petitioner, I shall read the same in Malayalam:—

മതന്യൂനപക്ഷങ്ങളിൽപ്പെട്ട ആയിരക്കണക്കിന് നിരപരാധികളുടെ രക്തം പുരണ്ടതാണ് ആർ. എസ്സ് എസ്സിന്റെ കൈകൾ".

(The hands of the R. S. S. are stained with the blood of thousands of innocent persons belonging to religious minorities).

The sentence preceding it is to the effect that the Indian Union Muslim League has no compunction whatsoever to join hands with the Janatha dominated by the R. S. S. The sentence that follows Ext. P1 (a)

sentence is to the effect that that league who claims to be the bodyguard of the Muslims are joining hands with those hands (the hands of the R. S. S.). In short, the I respondent is sarcastically emphasising the alignment of the Indian Union Muslim League, a political party, with the Janatha, another political party. In so doing he says that the Janatha is dominated by R. S. S. and he describes the R. S. S. using the hyperbole that its hands are stained with the blood of thousands of persons belonging to religious minorities. Certainly the statement is not expected to be taken or understood literally for obviously the R. S. S. and the League have no 'hands' in the literal sense of the word. According to the petitioner the R. S. S. is a social organisation and it is common case that the League is a political party. Applying the rules of construction laid down in the *Kultar Singh* case, it is 'part of the game' and does not fall within the mischief of section 125 (3A) of the Act.

15. I may herewith advantage also quote the following passage from *Kultar Singh's* case:—

> "It is well-known that there are several parties in this country which subscribe to different political and economic ideologies, but the membership of them is either confined to, or predominantly held by, members of particular communities or religions. So long as law does not prohibit the formation of such parties and in fact recognises them for the purpose of election and parliamentary life, it would be necessary to remember that an appeal made by candidates of such parties for votes may, if successfull, lead to their election and in an indirect way, may, conceivably be influenced by considerations of religion, race, caste, community or language. This infirmity cannot perhaps be avoided so long as parties are allowed to function and are recognised, though their composition may be predominantly based on membership of particular communities or religion."

The Supreme Court, quoting the above passage, relied on it in *Ebrahim Sulaiman Sait* v. *M. C. Mohammed*, (1980) I SCC 398, to hod the speech considered in that case does not fall within section 123 (3A) of the Act. In the second mentioned case the Supreme Court said:—

> "It seems to us that the speech sought to criticise the wrong Policy of the Muslim League (Opposition) in aligning with parties that were allegedly responsible for atrocities against the Muslims and not just to emphasise the atrocities. In our opinion it cannot be said that the speech falls within the mischief of Section 123 (3A) of the Act; we have reached this conclusion keeping in mind the well established principle that the allegation of corrupt practice must be proved beyond reasonable doubt."

In my view the above quoted passage can quite appositely be used so far as Ext. P1 leaflet is concerned on surer grounds and for better reasons. The leaflet has been issued, to borrow the language of the

Supreme Court in another case, *Mohammed Koya v. Muthukoya* (1978 K.L.T. 699)' against a political background and for political purpose'.

16. The petitioner examined P. W. 6 in order to establish that Ext. P1 had the effect of promoting enmity and hatred between two classes of people. His evidence is to the effect that showing Ext. P1 leaflet to him, his wife asked him, why he is working for the petitioner and further told him that their children are disgruntled over it because 'they' are against religious minority. He also says that after seeing the notice his Muslim neighbours had a change of mind in that they said that the R. S. S. is involved and it is a matter of life and death. No other witness (except the petitioner. P. W. 1) has been examined on this point and what P. W. 6, an active worker for the petitioner, says is only hearsay. His evidence appears to be too artificial to be accepted.

17. *Involvement of Shri K. V. Ramakrishnan, I. A. S. in the election campaign.*—The second question that arises for consideration in this issue concerns the alleged involvement of a member of the Indian Administrative Service, Shri K. V. Ramakrishnan, in the election campaign on behalf of the 1st respondent. According to the petitioner Shri K. V. Ramakrishnan has canvassed votes for the 1st respondent. To establish this the petitioner has examined P.Ws. 2 to 5 and 8.

18. P.W. 2 was cited to prove that Shri Ramakrishnan stayed in the P.W.D. Rest House at Alleppey from 11-1-1980 to 13-1-1980. P.W. 2 is the Steward of that Rest House and pursuant to summons taken out in that behalf he has produced Ext. P2 Register of Occupation of the Rest House, Alleppey. The register does not prove this fact nor does P.W. 2 swear to that fact. P.W. 3 is the Cook of that Rest House. He in answer to a question in examination-in-chief said that he has not seen Shri Ramakrishnan on 10th, 11th or 12th of January, in the Rest House. Though the learned counsel for the petitioner was, then, allowed to put to the witness such questions as may be put in cross-examination, nothing has been elicited from him which would suggest that Shri Ramakrishnan stayed in that Rest House during those days.

19. P.W. 4 is one who was actively working for the petitioner. Though he says that he knows Shri K. V. Ramakrishnan, he has no acquaintance with him. He has seen him several times but has not talked to him. His evidence is to the effect that one night the 1st respondent in company with Shri Ramakrishnan and few others, four or five in number, went to his house between 9 p. m. and 10 p. m. His recollection is that it was on the 11th January. They went to the house of this witness and asked this witness to cast his vote for the 1st respondent. Shri Ramakrishnan also solicited this witness to vote for the 1st respondent. On his own evidence P.W. 4 is a person who was going about speaking in election meetings canvassing votes for the petitioner. Yet he swears that the 1st respondent, Shri Ramakrishnan and one Varghese Vaidian who was also with them with the rest of the party, on that night when they went to his house successively asked for his vote, despite to each of them he answered

in succession that it is not possible. It is highly improbable that the Ist respondent would have gone to the house of this witness who was an active worker of the petitioner, asking for his vote for the Ist respondent, and that too, according to this witness, in the company of a very high officer, Shri Ramakrishnan along with four or five other persons. He is not on any intimate terms with Shri Ramakrishnan so that it cannot be said that the latter could exert any influence over him. It is difficult to believe the story that the Ist respondent who has 32 years' experience in political life and is an Ex-Chief Minister of the State, took with him a high officer from the Indian Administrative Service as a common compaigner for votes from house to house—the evidence of P.W. 4 is that from his house all these campaigners went to his neighbouring house of Sarata, a School Mistress—or that such an officer would have canvassed votes openly as an ordinary worker of the Ist respondent going from house to house irrespective of whether he can influence the concerned voter or not. It appears to me that both of them, the Ist respondent and the officer, should be credited with some more common-sense that revealed by the evidence of P. W. 4 that if they were inclined to commit a corrupt practice of this nature, they would have been careful not to approach a firm supporter of the petitioner like P. W. 4 and not to do so openly and in the company of many-one witness, P. W. 5, says that this canvassing party consisted of about 50 persons. I do not think it safe to act upon his evidence.

20. P. Ws. 5 and 8 say that they thought that one person who came to their houses along with the party of campaigners to canvass votes for the Ist respondent was Shri Ramakrishnan. Previously P. W. 5 has seen Shri Ramakrishnan only once. He at that time saw him climbing up the stairs. The witness was then standing at the bottom of the stairs in the Collectorate. Because he has seen this officer as stated above, he thought that one of the persons amongst a party of 50 persons who came to his house to canvass votes was this officer. He is a prominent member of the Janatha Party, for he represented that party at a conference convened by the District Collector in last April and was a member of the Constituency Committee of that party. He was also the petitioner's polling agent. P. W. 8 likewise deposes that he thought that one in the party comprising 8-10 persons who came to his house to canvass votes for the Ist respondent is Shri Ramakrishnan. The same infirmity that was pointed out with reference to the evidence of P. W. 4 exists in the evidence of P. Ws. 5 and 8 also. It is not safe to find commission of a corrupt practice falling under Section 123 (7) of the Act on such evidence.

21. It is settled law that in election cases oral evidence cannot be accepted at its' face value without looking for assurance from some surer circumstances or unimpeachable documents. In *Rahim Khan v. Khurshid Ahmed* (A.I.R. 1975 S. C. 290 at 299) the Supreme Court said:—

> "We regard it as extremely unsafe, in the present climate of Kilkenny cat election competitions and partisan witnesses wearing robes of veracity, to up turn a hard won electoral victory merely because lip service to a corrupt practice has

been rendered by some sanctimonious witnesses. The Court must look for serious assurance, nalying circumstances on unimpeachable documents to uphold grave charges of corrupt practices which might not merely cancel the election result, but extingnish many a man's pnblic life."

The Supreme Court quoted the above passage with approval in *Kanhiya Lal* v. *Mansa Lal* (A.I.R. 1976 S. C. 1886) and again in *Amolak Chand* v. *Bhagwandas* (A.I.R. 1977 S. C. 813). No documentary evidence supports the version given by P Ws. 4,5 and 8 and the circumstances stated above militate against their story. I, therefore, reject the evidence of P. Ws. 4,5 and 8 as unworthy of credence and hold that it has not been established that Shri K. V. Ramakrishnan canvassed votes for the 1st respondent.

22. I find that the corrupt practices alleged in the petition, either the one that falls under section 123(3) and (3A) or the other falling under section 13(7)(a) of the Act have not been proved to have been committed at the election. Consequently I answer Issue 2 in the negative, that is to say, against the petitioner and in favour of the I respondent.

23. *Issues 3 and 4*:—It is the case of the petitioner that there has been non-compliance with rules 55 to 63 of the Conduct of Elections Rules, 1961 in the counting of votes, and that, therefore, the election of the I respondent is liable to be set aside under section 100(1) (d) (iv) of the Act. The petitioner relies on the evidence of P. Ws. 7 and 9 who are his counting agents to substantiate this allegation.

24. P. W. 7 speaks of an instance when votes obtained by the respective candidates were being tied into bundles of 50 votes each only 45 votes were put into a bundle of votes obtained by the 1st respondent and the same was rectified on objection. He also says that on verification of three or four such bundles of votes obtained by the petitioner it was found that two or three more votes were put in to each of them and that when this persisted he complained to the counting staff on his table but despite such complaint, they went on counting in the same manner. This witness appears to have kept mum about it till the counting was about to be over when only (as stated by him) he reported about it to the chief counting agent However, as spoken to by him, the chief counting agent took no interest whatsoever. He further says that then three or four of the petitioner's counting agents including himself submitted a written complaint before the officer who was seated on the plat-form (obviously the Returning Officer or the Assistant Returning Officer-he does not specify) but that officer took no heed of that complaint. Then they sent for the petitioner. He, according to this witness, came and submitted an application for re-count. As sworn to by this witness that application was not allowed.

25. P. W. 9 says that while sorting votes, votes cast to the petitioner were being placed with those obtained by the 1st respondent, that the same was rectified when pointed out, again this was repeated and again rectified,

that therefore he became suspicious about certain bundles, that he caused these bundles to be again counted, and that on such re-counting of these bundles some discrepancies were detected. It is his further evidence that such mistakes continued and when asked for re-count the counting staff said that it is not possible to re-count all bundles and that whenever mistakes have been pointed out, the same has been rectified. He also speaks about the written complaint by four or five counting agents stated to have been submitted to the Returning Officer and that officer ignoring the same.

26. It is not clear, nor has it been specified anywhere, as to which all rules amongst rules 55 to 63 have not been complied with. Nor has the petitioner made out a strong prima facie case entitling him to an order for discovery and inspection or to an order for re-count. In *Beliram* v. *Jai Behari Lal* (A. I. R. 1975 S. C. 283 at 289-290) the Supreme Court said:—

> "Since an order for a recount touches upon the Secrecy of the ballot, it should not be made lightly or as a matter of course. Although no caste iron rule of universal application can be or has been laid down, yet from a beadroll of the decisions of this Court, two broad guidelines are discernible, that the Court would be justified in ordering a re-count or permitting inspection of the ballot papers only where (i) all the material facts on which the allegations of irregularity or illegality in counting are founded, are pleaded adequately in the election petition, and (ii) the Court/Tribunal trying the petition is prima facie satisfied that the making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties."

To the same effect is the decision in *N. Narayanan* v., *S. Semmalai* (A. I. R, 1980 S. C. 206).

27. On Issue 3 I find that the petitioner is not entitled to have an order re-count. On Issue 4 my finding is that it has not been established that there has been non-compliance of any of the rules 55 to 63 of the Conduct of Elections Rules, 1961 in counting the votes in No. 100 Alleppey Constituency.

28. *Issue* 5:—No arguments were advanced before me on this issue. I find this issue against the petitioner and in favour of the 1st respondent.

29. *Issue* 6:—In view of my findings on Issues 2 to 5 I find this issue against the petitioner and in favour of the 1st respondent.

30. *Issue* 7:—The petitioner is not entitled to any relief. I dismiss this petition with costs which I fix at Rs. 2,000. The petitioner shall pay the costs fixed as above to the 1st respondent.

The Registrar shall intimate the substance of this decision to the Election Commission and the Speaker of the Kerala State Legislative Assembly, without delay and shall send to the Election Commission an authenticated copy of this decision, as soon as possible, as required by section 103 of the Act.

(Sd.)

GEORGE VADAKKEL,

Judge.

23rd July 1980.

By order,

(Sd.)

K. GANESAN,

Secretary to the Election Commission of India.